

**Hahn Motors, Inc. and Hahn Truck Sales & Service Corp. & Stavín Enterprises, Inc., d/b/a S E Fire Apparatus, Successor and United Steelworkers of America, AFL-CIO-CLC**

**Stavín Enterprises, Inc., d/b/a S E Fire Apparatus and United Steelworkers of America, AFL-CIO-CLC.** Cases 4-CA-13275 and 4-CA-20082

July 22, 1994

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND DEVANEY

On May 6, 1987, the National Labor Relations Board issued a decision in Case 4-CA-13275 in which it ordered Respondents Hahn Motors, Inc. and Hahn Truck Sales & Service Corp., a single employer (together, Hahn), their officers, agents, successors, and assigns, to, *inter alia*, make whole their employees for any loss of pay or benefits incurred because of the Respondents' failure to apply the terms of the collective-bargaining agreement covering employees in the bargaining unit.<sup>1</sup> On March 26, 1990, the United States Court of Appeals for the Third Circuit entered a judgment enforcing the Board's Order.<sup>2</sup>

On January 31, 1992, the Regional Director for Region 4 issued a complaint and notice of hearing in Case 4-CA-20082 against Respondent Stavín Enterprises, Inc., d/b/a S E Fire Apparatus, alleging that Respondent Stavín is the successor to Hahn and that it had failed and refused to recognize and bargain with the Union as the representative of employees in the bargaining unit, in violation of Section 8(a)(5) and (1) of the Act. Respondent Stavín filed an answer in which it denied that it is an employer engaged in commerce within the meaning of the Act, that it is the successor to Hahn, that the Union is the exclusive bargaining representative of employees in the unit, and that it had failed and refused to bargain with the Union.

A controversy having arisen over the amounts of backpay due under the terms of the Board's Order in Case 4-CA-13275, the Regional Director on July 30, 1993, issued a compliance specification and notice of hearing which alleged, *inter alia*, that Respondent Stavín is the successor to Hahn and that it took over Hahn's operations with notice of Hahn's unfair labor practices and of its liability under the Board's Order to make whole its employees.<sup>3</sup> Respondent Stavín filed

an answer to the specification, signed by its president, Robert Stavín, in which it again denied that it is the successor to Hahn, and in which it further denied that it had notice of Hahn's unfair labor practices. Concerning the specification's backpay formula and computations, the answer stated, "Deemed denied. It is specifically denied Respondent has continued a[s] an employing entity and is the legal successor in interest to Hahn Motors and Hahn Trucks and has no way of knowing the truth of facts presented." No answer was filed on behalf of Hahn.

On October 8, 1993, the Regional Director issued an order consolidating Cases 4-CA-13275 and 4-CA-20082.

On May 9, 1994, the General Counsel filed with the Board a motion to transfer proceedings to the Board; for summary judgment regarding Hahn in Case 4-CA-13275; to strike portions of Respondent Stavín's answer to the compliance specification; and for partial summary judgment concerning Respondent Stavín in Case 4-CA-13275, with exhibits attached. In the motion, the General Counsel alleges that by letter dated December 23, 1993, counsel for the Acting General Counsel informed Respondent Stavín's president, Robert Stavín, that Respondent Stavín's answer to the compliance specification was deficient under Section 102.56 of the Board's Rules and Regulations in that it was not sworn to; failed to explain certain admissions and denials; was unresponsive to the allegation that Respondent Stavín knew of Hahn's unfair labor practices when it became the successor to Hahn; and failed to answer the details of the portions of the specification containing the backpay formula and computations. The letter also informed Stavín that the "assertion that Respondent has no way of knowing the truth of the facts presented is not a denial of knowledge, and especially requires explanation given your prior status with Hahn," the latter presumably referring to the fact that Robert Stavín had been president of both Hahn Motors and Hahn Truck Sales, as well as of Respondent Stavín. The letter further informed Stavín that if Respondent Stavín did not file an amended answer by January 14, 1994, the General Counsel would move to strike portions of the answer and/or for summary judgment. The letter concluded by noting that no answer to the compliance specification had been filed on behalf of Hahn, and stated that if no answer on behalf of those Respondents was received by January 14, 1994, the General Counsel would move for summary judgment against them. The General Counsel alleges that Respondent Stavín did not respond to the letter and did not file an amended answer, and that Hahn did not file an answer. The General Counsel therefore moves that the Board find the allegations of the compliance specification to be true concerning Hahn and

<sup>1</sup> 283 NLRB 901.

<sup>2</sup> No. 90-3065 (unpublished).

<sup>3</sup> If the allegations of the specification are correct, Respondent Stavín would be liable for the make-whole remedy imposed on Hahn. See *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973); *Perma Vinyl Corp.*, 164 NLRB 968 (1967), *enfd. sub nom. United States Pipe & Foundry Co. v. NLRB*, 398 F.2d 544 (5th Cir. 1968).

order Hahn to pay the amounts set forth in the specification.

The General Counsel further asserts that Respondent Stavin's answer to the portions of the specification containing the backpay formula and computations is deficient under Section 102.56(b) and (c) of the Board's Rules and Regulations, and moves that the Board strike those portions of the answer and find the corresponding portions of the specification to be true regarding Respondent Stavin. Finally, the General Counsel moves that the Board order a hearing regarding Respondent Stavin limited to the issues of (1) whether Respondent Stavin is the successor to Hahn, and (2) determining the discriminatees' regular expenses, medical expenses, interim earnings, and net backpay.

On May 12, 1994, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. The Respondents did not file a response. The allegations of the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on Motion to Strike and for Partial  
Summary Judgment Concerning Respondent  
Stavin, and for Summary Judgment Concerning  
Respondents Hahn Motors and Hahn Truck Sales

Section 102.56 of the Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

Concerning Respondent Stavin, we observe initially that, although in his letter to Robert Stavin, counsel for the Acting General Counsel cited Respondent Stavin's failure to file a sworn answer as required by Section 102.56(a) of the Board's Rules and Regulations,<sup>4</sup> the General Counsel has not moved to strike the entire answer on that procedural ground. Also, although the letter noted Respondent Stavin's failure to answer paragraph 1 of the compliance specification (which contains the allegations concerning Respondent Stavin's status as the alleged *Golden State* successor to Hahn) in the manner prescribed in Section 102.56(b), the General Counsel does not rely on those alleged shortcomings in his Motion for Partial Summary Judgment against Respondent Stavin. Instead, the General Counsel urges the Board to strike only the portions responding to paragraphs 2 through 5 of the specification, which concern the formula for and computation of gross backpay, and to grant partial summary judgment concerning those matters. As noted above, the General Counsel has not moved for summary judgment on the issues of Respondent Stavin's successor status or the amounts of the backpay claimants' interim earnings, regular expenses, medical expenses, or net backpay.<sup>5</sup>

Turning to Respondent Stavin's "deemed" denial of the allegations in paragraphs 2 through 5 of the specification, we find, in agreement with the General Counsel, that the Respondent's answer is deficient under Section 102.56. Section 102.56(b) states that "The an-

<sup>4</sup> Sec. 102.56(a) states that

The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

<sup>5</sup> The Board has held that general denials of allegations concerning successorship and interim earnings, such as those contained in Respondent Stavin's answer, are sufficient to raise issues requiring a hearing. See, e.g., *Lobster Trap*, 287 NLRB 1322, 1323 (1988).

swer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.” Section 102.56(b) also makes plain that a general denial of matters within the Respondent’s knowledge, including factors entering into the computation of gross backpay, is insufficient. Despite the latter provision, Respondent Stavin asserts that it is not the successor to Hahn, and that it has “no way of knowing” whether the gross backpay allegations in the specification are accurate. As the General Counsel argues, and as counsel for the Acting General Counsel noted in his letter to Robert Stavin, that assertion requires explanation, especially because Robert Stavin was president of both Hahn Motors and Hahn Truck Sales, and is president of Respondent Stavin. However, in its answer, Respondent Stavin avers that

[a]ll of the general intangibles of Hahn Motors and Hahn Truck, including without limitation the corporate names and logos, the goodwill, the mechanicals, shop and engineering drawings, customer lists, vendor lists *and records* were sold by Meridian Bank to a third party believed to be American La France. *Respondent has no right to use these intangibles.* [Emphasis added.]

The quoted material may imply, but does not clearly state, that the personnel records and collective-bargaining agreements pertaining to the computation of gross backpay were among those “records” assertedly sold to a third party and to which Respondent Stavin assertedly has no right of access. In its answer, however, the Respondent does not rely directly on those assertions in claiming that it has “no way of knowing” the truth of the allegations in the specification. Nor did Respondent Stavin file an amended answer or a response to the Notice to Show Cause, asserting any basis for its claimed lack of knowledge. Moreover, the specification refers to both the collective-bargaining agreements and the Respondent’s payroll records as sources on which the backpay formula and computations were based. Apparently, then, the Regional Office possessed copies of those documents, even if Respondent Stavin did not. Yet there is no indication that Respondent Stavin asked the Regional Office for copies, or even for access to the documents in its possession. We thus find no merit to Respondent Stavin’s assertion that it had “no way of knowing” whether the allegations in the specification were true.<sup>6</sup> Consequently, we find that the portions of the answer concerning the gross backpay allegations in paragraphs 2 through 5 of the specification are insufficient under Section 102.56, and we grant the General Counsel’s

motion to strike those portions of the answer. Pursuant to Section 102.56(c), we deem those allegations of the specification to have been admitted to be true. Accordingly, we grant the General Counsel’s Motion for Partial Summary Judgment concerning those allegations about Respondent Stavin.

Respondents Hahn Motors and Hahn Truck Sales failed to file an answer to the specification and have not shown good cause for their failure to do so.<sup>7</sup> We therefore deem the allegations of the specification to have been admitted to be true in their entirety as to those Respondents. However, because Respondent Stavin, the alleged *Golden State* successor to Hahn, has filed an answer containing a general denial of amounts claimed for interim earnings, and because the General Counsel has not moved for summary judgment on the issues of the backpay claimants’ interim earnings, regular expenses, and medical expenses, we shall not make a determination of final backpay liability. Rather, as the General Counsel urges in the motion, we shall remand this proceeding for a hearing on those issues and on Respondent Stavin’s status as Hahn’s successor, and for a final computation of backpay liability. Accordingly, we grant the General Counsel’s Motion for Summary Judgment regarding Hahn, except to the extent the issues of interim earnings, regular expenses, and medical expenses must be resolved at a hearing.<sup>8</sup>

#### ORDER

It is ordered that the General Counsel’s motion to strike the portions of Respondent Stavin’s answer to the compliance specification in Case 4–CA–13275 concerning the formula for, and computation of, gross backpay, and for partial summary judgment on those issues against Respondent Stavin, is granted.

IT IS FURTHER ORDERED that the General Counsel’s Motion for Summary Judgment in Case 4–CA–13275 against Respondents Hahn Motors, Inc. and Hahn Truck Sales & Service Corp. is granted, except insofar as the issues of interim earnings, regular expenses, and medical expenses are remanded to be decided at a hearing.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 4 for the purpose of arranging a hearing before an administrative law judge, limiting such proceeding to a determination, in Case 4–CA–13275, of whether Respondent Stavin Enterprises, Inc., d/b/a S E Fire Apparatus, is the successor to Respondents Hahn Motors and Hahn Truck Sales and liable for remedying their unfair

<sup>7</sup> A possible reason is that those companies are out of business, as Respondent Stavin alleges in its answer to the complaint in Case 4–CA–20082.

<sup>8</sup> See *Transportation by La Mar*, 281 NLRB 508, 510 (1986). Respondents Hahn Motors and Hahn Truck Sales, if they still exist, shall not be allowed to participate in the hearing. *Id.* at fn. 6.

<sup>6</sup> See *Schnabel Associates*, 286 NLRB 630, 631 (1987).

labor practices, and of the amounts of interim earnings, regular expenses, medical expenses, and net backpay of the backpay claimants; and in Case 4–CA–20082, of whether Respondent Stavin unlawfully refused to recognize and bargain with the Union as the exclusive representative of employees in the bargaining unit.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings, conclusions, and recommendations based on all the record evidence. Following the service of the judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.